REMARKS

The present amendment is in response to the Office action dated 3 January 2007, where the Examiner has rejected claims 1-11. Accordingly, claims 1-11 are pending in the present application with claims 1 and 7 being the independent claims. Reconsideration and allowance of pending claims 1-11 in view of the following remarks is respectfully requested.

A. Rejection of Claims 1 – 11 Under 35 USC §103

In the Office Action, claims 1 – 11 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,714,795 ("Long") in view of U.S. Publication No. 2002/0173326 ("Rosen"). The Examiner states that the combination of the two references makes the claims obvious. This rejection is traversed as follows.

An invention is unpatentable if the differences between it and the prior art would have been obvious at the time of the invention. As stated in MPEP § 2143, there are three requirements to establish a *prima facie* case of obviousness.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure.

1. Suggestion or Motivation to Combine

In the Office Action, the Examiner cites as motivation for combining the references the desire to achieve efficient push-to-talk ("PTT") communication in order to reduce latency of PTT communication devices. The Examiner makes no citation to either reference that discloses such a motivation and the office action does not identify any portions of either reference that suggests a modification of the disclosure in the reference or suggests a combination with a reference that provides additional functionality. Applicant respectfully submits that the only logical connection between the references is the general concept of PTT communication and that the cited references are only modified in retrospect, in light of the present application. That is, the obviousness rejection is based upon the Applicant's own specification and not a reasonable modification of Long based on motivation found in Long or Rosen. Moreover, the combination of references made in the §103(a) rejection appear to be the result of keyword searches as opposed to a true nexus of related ideas in the same field of art.

"Therefore, an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue....To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that would create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art reference for combination in the manner claimed." *In re Rouffet*, 47 USPQ2d 1453, 1457-1458 (1998).

"The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

2. Reasonable Expectation of Success

Further, the Examiner has not demonstrated that the combination of the cited references points to the reasonable expectation of success in arriving at the elements of the present claims, which is the second requirement of the obviousness analysis. Moreover, Long, which the office action acknowledges does not disclose storing the received audio in a buffer on the initiating wireless communication device, expressly requires that the initiating wireless communication device does not get permission to talk until at least one gather message has gone out to the entire talkgroup. (Column 5, Lines 30-33). Accordingly the combination of Long with Rosen for the purpose stated in the office action is contrary to the teachings of Long. Thus, no reasonable expectation of success has been demonstrated.

3. Combined References Must Teach All Claim Limitations

With respect to the third prong of an obviousness analysis, the combination of the references does not yield each and every limitation of independent claims 1 and 7 and their respective dependent claims. The Long reference discloses a one to many PTT system while Rosen discloses a controller for reducing latency in wakeup in group communications, thus both are generally related to PTT communications.

However, the Long reference does not meet the elements of independent claims 1 and 7. Importantly, the independent claims require a specific responsive relationship between the identified messages that Long does not teach.

First, independent claims 1 and 7 specify that a call message is sent by the wireless communication device and that a connection status message is received in response to the call message. The disclosure in Long states that the Link Channel Establish Request message 204 is the call message (it is sent in response to a user pressing the PTT button). (Column 4, Lines 23-26). Long also states that the Link Channel Assignment message 208 is returned in response to the Link Channel Establish Request 204. (Column 4, Lines 30-33). This is the only message disclosed by Long that is responsive to the call message as required by independent claims 1 and 7. Thus, the Link Channel Assignment message 208 in Long is the connection status message according to independent claims 1 and 7.

Second, independent claims 1 and 7 specify that an audio channel be opened in response to the connection status message. Long does not disclose this relationship. To the contrary, Long only opens an audio channel after its CC CONNECT message 244 has been transmitted repeatedly on the assigned channel to indicate to the initiating wireless communication device that the voice channel has been granted. (Column 5, Lines 34-45). Even further removing the disclosure in Long from the elements of independent claims 1 and 7 is that the CC CONNECT message 244 of Long is not sent until after the first LINK CHANNEL ASSIGN(DISPATCH) message 242 is sent. (Column 5, Lines 27-32).

Thus, the fundamental mechanism by which Long establishes a PTT session is completely different from independent claims 1 and 7. Applicant therefore asserts that independent claims 1 and 7 are presently in condition for allowance and a notice of allowance is respectfully requested.

Furthermore, the office action cites paragraphs 35-40 and Fig. 2 of Rosen as disclosing storing the received audio in a buffer on the initiating wireless communication device. However, no such disclosure is provided. Fig. 2 of Rosen merely illustrates how several communication devices interact with a communications manager while a careful review of paragraphs 35-40 reveals that no such disclosure is provided.

Accordingly, the combination of Rosen with Long fails to meet each and every limitation of independent claims 1 and 7 and applicant believes that for this additional reason that all pending claims are presently in condition for allowance. A notice of allowance is respectfully requested for claims 1 – 11.

B. Conclusion

For all the foregoing reasons, allowance of claims 1 – 11 pending in the present application is respectfully requested. If necessary, applicant requests, under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above-identified application and to charge the fees for a large entity under 37 CFR 1.17(a). The Director is authorized to charge any additional fee(s) or any underpayment of fee(s) or credit any overpayment(s) to Deposit Account No. 50-3001 of Kyocera Wireless Corp.

Respectfully Submitted,

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/Jonathan T. Velasco/
Jonathan T. Velasco
Reg. No. 42,200

Jonathan T. Velasco
Kyocera Wireless Corp.
Attn: Patent Department
P.O. Box 928289
San Diego, California 92192-8289
Tel: (858) 882-3501
Fax: (858) 882-2485